



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/305,178	05/04/99	RIBADEAU-DUMAS	G 6-1032-035

HENDERSON & STURM LLP
206 SIXTH AVE
1213 MIDLAND BLDG
DES MOINES IA 50309-4076

IM22/0201

EXAMINER

DUBOIS, P

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/01/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/305,178

Applicant(s)

RIBADEAU-DUMAS ET AL.

Examiner

DuBois

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

DETAILED ACTION

Continued Prosecution Application

The request filed on November 14, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/305,178 is acceptable and a CPA has been established. An action on the CPA follows.

The rejections of the previous Office Action have been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yotka et al (U.S. Patent 5,458,892).

Yotka et al (Yotka) teaches a chewing gum product and other comestibles containing indigestible dextrin and methods of making such products are disclosed (U.S. Patent 5,458,892, abstract). Yotka teaches that combinations of the dextrin and other compounds such as sorbitol, maltitol, xylitol, lactitol and mannitol in aqueous form may be blended and then added to the gum (col. 6, lines 1-10). Yotka also teaches that the dextrans themselves are made by hydrolyzing starches in a dry state by the addition

Art Unit: 1761

of acid and heat (col. 3, lines 15-20). The roasting causes highly branched carbohydrates or pyrodextrins. The pyrodextrins may then be further processed to take advantage of its indigestible properties (col. 3, lines 20-30). There are several types of indigestible dextrin. The indigestible dextrin/pyrodextrin may vary from higher molecular weight starches to lower molecular weight starches. The indigestible dextrin may be added in amounts from 0.5% to about 25% of the formulation and would be used to substitute sucrose and other compounds. Thus, the ratio of the indigestible dextrin to other compounds would vary (col. 5, lines 1-20). Thus, it would have been obvious to one of ordinary skill in the art to optimize the ratio of the components depending on the desired characteristic of the product such as sweetness. Yotka further teaches that any of these forms are suitable for use in gum. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to optimize the molecular weight of the pyrodextrin depending on the desired properties of the pyrodextrin (col. 3, lines 40-50).

Response to Arguments

Applicant's arguments with respect to claims 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


1. No claim is allowed.

Art Unit: 1761

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Oyamada et al (U.S. Patent 3,915,736) teaches a sweetener comprised of a hydrogenated dextrin and other sweeteners.
3. Any inquiring concerning this communication or earlier communications from the examiner should be directed to Philip DuBois whose telephone number is (703) 305-0508. The examiner can normally be reached on Monday through Friday from 8:00 to 5:30. The examiner is not in the office the second and fourth Fridays of each month.
4. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached at (703)-308-0756. The fax number for the group is (703)-305-3602.
5. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0661.

Philip DuBois

11/19/00


MILTON CANO
PRIMARY EXAMINER
Call 1761